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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1258

UNITED AIRCRAFT CORPORATION, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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OPINIONS BELOW

This petition is filed by the United Aircraft Corporation, Petitioner, in support of its petition for a Writ of Certiorari to issue to the United States Court of Appeals for the Second Circuit to review the decision of that Court in *United Aircraft Corporation* v. *NLRB*, — F.2d —, 75 LRRM 2892 (not yet officially reported).

The opinion of the Court is reprinted in the appendix to this petition (App. pp. 2a-18a). That decision of

the Court enforced an order of the National Labor Relations Board in *United Aircraft Corporation*, 181 N.L.R.B. No. 180 (1970). The decision of the Board is reprinted in the appendix to this petition (App. pp. 10a-20a). The Board's decision adopted the decision of Trial Examiner Owsley Vose, which is also reprinted in the appendix to this petition (App. pp. 21a-42a).

JURISDICTION

The date of the opinion and order of the Court of Appeals was November 16, 1970 (App. p. 2a). The order of the Court of Appeals was stayed on December 22, 1970, at the request of petitioner pursuant to rule 41 (b) of the Federal Rules of Appellate Procedure pending this application for a Writ of Certiorari and this Court's disposition of the writ.

The statutory provision conferring jurisdiction on this Court to review the Court of Appeals decision is 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether an employer violates Section 8(a) (5) in declining to furnish to the Union the names and home addresses of the approximately 25,000 employees in the bargaining units involved in circumstances where (1) alternate methods of Union communication with employees exist, (2) the company had a good faith doubt of the Union's representative status at the time the request was made, and (3) there was a past history of Union directed violence at the homes of a substantial number of employees who had refused to join or who had abandoned a strike called by the Union.

STATUTE INVOLVED

The statute involved is Section 8(a)(1) and (5) of the National Labor Relations Act, 29 U.S.C. § 158 (a)(1) and (5), which provides:

"Sec. 8(a). It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7. . . .

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a).

STATEMENT OF THE CASE

United Aircraft Corporation has about 60,000 salaried and hourly paid employees at various plants in several states engaged in research and development and the manufacture of various products for use in the aerospace industry.

The Company's largest division, Pratt & Whitney, is principally occupied with aircraft and rocket engines. Its main plant is located at East Hartford, Connecticut, where about 16,000 hourly paid employees are employed and are covered by a labor agreement between it and Lodge 1746 of the International Association of Machinists. In addition to the East Hartford plant, the Pratt & Whitney division also maintains several other plants at other locations in Connecticut and Florida where most of the hourly paid employees comprise separate units. One such plant is located at Manchester, Connecticut, and its approximately 180 employees are covered by a labor agreement with IAM Lodge 1746. The unit at Southington, Connecticut is covered by a separate contract with Lodge 1746-A; the unit at Middletown, Connecti-

cut (about 1400 employees) is covered by a contract with IAM Lodge 700. The Company has other plants at North Haven, Connecticut and West Palm Beach, Florida, which are not involved in this proceeding. (App., pp. 23a-24a)

The Company's Hamilton Standard Division at one time was principally engaged in the manufacture of propellers for aircraft engines. Since the development of jet and rocket engines, however, its work has shifted to other items such as jet fuel controls, environmental controls for jet aircraft and space vehicles, space suits, electronic ground support equipment, etc. Hamilton's operations are mostly centered at Windsor Locks, Connecticut, where about 4,600 hourly paid workers constitute two separate bargaining units. Both of such units (one containing about 600 and the other about 4,000 employees) are covered by separate labor agreements with IAM Lodge 743 (App., p. 24a).

The Company's other operating divisions include The Sikorsky Division, The Norden Division, and Technology Center where various units of hourly paid workers are represented by the I.U.E., the UAW and the Teamsters. None of these divisions nor the unions representing their employees is directly involved in this case.

Background

In June of 1960, IAM and UAW local unions representing employees of the Pratt & Whitney Aircraft Division, the Hamilton Standard Division, and the Sikorsky Division in Connecticut and Florida engaged in a concerted strike against the Company.[1] As the

[1] Only the Southington plant represented by Lodge 1746-A refrained from striking.

Board noted in *United Aircraft Corporation*, 134 NLRB 1632, 1633, 49 LRRM 1284 (1961), the strike "was attended by mass picketing and violence", and in a proceeding initiated by the Board under Section 10(j) of the Act, the unions on June 16, 1960 entered into a stipulation whereby they agreed to halt their illegal activities (App., pp. 24a-25a).

While the mass picketing and violence of the unions at the picket lines subsided as a result of these proceedings, the stipulation proved to be no substantial deterrent to union directed violence and intimidation practiced surreptitiously away from the lines, particularly at the homes of employees who sought to work during the strike (App., p. 25a). As the Connecticut Superior Court stated in *United Aircraft Corporation* v. *Lodge 1746, Lodge 743, District 91*, I.A.M., 68 LRRM 2488, 2493 (Connecticut Superior Court, Hartford County-1968):

> "Following the entry of the stipulation in Court June 13, 1960, the threats, acts of intimidation, harassment by phone calls, physical damage to cars and property of nonstrikers continued. From the time the strike started on June 8th until the end of the strike August 11th the personnel director of the plaintiff corporation at the East Hartford plant received in excess of 1,000 complaints concerning such activities, a majority of them being received after June 16th, a date subsequent to the entry of the stipulation."

In the same opinion (at page 2494), the Court described the operation of union directed "night riders" at employees' homes as follows:

> ". . . As such they (the night riders) damaged automobiles of non-striking employees. They

> flooded the cellars of their houses, they burned their hedges, they threw paint bombs through their house windows. They tried to burn a barn behind a house where many non-strikers lived. They burned one of the non-striking employee's automobile . . ."

The end of the strike did not bring about a complete end of the union's warfare against the non-striking employees. As the Board noted in *United Aircraft Corporation*, 134 NLRB 1632, 1634, 1635, 49 LRRM, 1384 (1961):

> ". . . at the conclusion of the strike and after the strike settlement was reached, a local newspaper published a letter which had been signed by the Union's vice president. This letter stated in part: *'-the cry "scabbie" will ring loud and clear throughout Connecticut for many years to come. It will follow some employees to their graves. For them the strike is just beginning'* (4) in October 1969 the Union's vice president prepared a list of approximately 150 employees which contained the following heading: 'This list is furnished you courtesy of 963 strike committee. These scabs crossed the picket lines between June 8 and August 9.' It appears that some 30 to 40 copies were distributed to plant employees; . . ." (Emphasis added)

In 1961 Lodges 743 and 1746 filed a suit against the Company for specific performance and damages involving the Company's alleged breach of the written agreements which ended the 1960 strike in the U.S. District Court for the District of Connecticut (App. p. 20). In this action the unions alleged that the Company had breached the agreements by failing to recall about 3,800 strikers to jobs they had held before the

strike (App., p. 26a). At the same time, the unions filed charges with the General Counsel of the Board alleging that the Company had discriminated against substantially the same 3,800 strikers by failing to restore them to their pre-strike jobs, and had refused to bargain with the unions by failing to furnish certain employee data and information to the unions (App., p. 26a). On the basis of these charges, the General Counsel of the Board issued a complaint in February of 1963 alleging that the company (Pratt & Whitney and Hamilton Standard Divisions) had violated Sections 8(a)(1) and (3) of the Act by failing at the end of the strike to restore about 3,800 strikers to their pre-strike jobs and had violated Section 8(a)(1) and (5) of the Act by failing to provide the unions with information and data concerning its employees (App., pp. 26a-27a).

A hearing on this complaint commenced on May 16, 1963, and continued intermittently until June 11, 1968. During this period, the General Counsel frequently amended his original complaint to include events occurring during the hearing. Thus, in 1964, the unions requested that the Company furnish them with copies of virtually all of its personnel records for each employee in the several bargaining units represented by the IAM unions in Connecticut. When the Company declined to do more than make such records available to the unions for their inspection and copying unless the unions would agree to pay the cost of reproducing such copies, the General Counsel amended the complaint to allege that the Company's action violated Section 8(a)(5) of the Act, and, forthwith petitioned the United States District Court for the District of Connecticut for an injunction compelling the company to provide copies of its records

without any compensation from the union (App., p. 27a).[2]

In the fall of 1965—at the invitation and instigation of the unions which had been involved in the strike—the Company entered into negotiations to obtain an amicable settlement of the then pending litigation, and new three-year labor contracts to replace those about to expire (App., p. 28a).

In March of 1966, however, after months of negotiations, the unions deliberately precluded any possibility of agreement resulting therefrom by inserting conditions far in excess of anything theretofore proposed (App., pp. 28a-29a). The Company thereupon lawfully questioned the unions' majority status and refused to negotiate further with the unions unless they could demonstrate by a Board election that they in fact possessed such majority status (App., p. 29a).

The unions responded by a Section 8(a)(5) charge, and the General Counsel with another complaint and a petition to the United States District Court for an injunction to compel the Company to continue its recognition of the unions. In this instance the District Court granted the injunction requested,[3] and,

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[2] This case was docketed in the District Court as Case No. 10,535, and is still pending before the Court. It was not heard in 1964 because of a stipulation entered into with the Court's approval whereby the Company undertook to supply the documents and records upon the unions' posting of a bond insuring payment of the cost in the event that it was eventually determined that the Company was not required as a matter of law to furnish the documents to the unions at its own expense.

[3] The Court's action is reported in *Hoban* v. *United Aircraft Corporation*, 264 F. Supp. 645, 63 LRRM 2081 (1966). After issuing the temporary injunction, the parties met pursuant to its terms and promptly executed new agreements. The Court

as a consequence, the Company in September 1966 entered into new contracts with the unions (App., pp. 29a-30a). A hearing before a trial examiner ensued on the General Counsel's complaint and on November 27, 1967, the Board issued its decision (168 NLRB No. 66, 67 LRRM 1010 (1967)) finding the Company's action in 1966 violated Section 8(a)(5) of the Act and ordering the Company to bargain with the unions (App., p. 31a).

The Company promptly filed a petition to review the Board's order in the United States Court of Appeals for the Second Circuit, and the unions filed a petition to review in the Court of Appeals for the District of Columbia. The latter Court decided the case on May 29, 1969, holding that the Company's action in 1966 had not violated the Act, and setting aside the Board's order of November 27, 1967. See *United Aircraft Corporation* v. *NLRB*, 416 F.2d 809 (D.C. Cir. 1969), cert. den., 90 S. Ct. 751 (App., p. 32a).

From August 5, 1966, through May 29, 1969, therefore, the company was compelled to negotiate and eventually enter into contracts with Lodges 1746 and 743 by the erroneously issued District Court order of August 5, 1966, and the subsequently overruled Board order dated November 27, 1967. The latest of such contracts were made effective for three years beginning on December 1, 1968, in the case of Pratt & Whitney

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thereupon *sua sponte* dissolved the injunction "in view of the company-respondent's full compliance with the Court's temporary injunction order issued August 5, 1966, and because new collective bargaining contracts have since been negotiated and executed which reinstate satisfactory lawful labor relations beyond the date of the Court's original order;". See also *Hoban* v. *United Aircraft Corporation*, 66 LRRM 2134, (1967) footnote 3.

and Lodge 1746, and on April 21, 1969, in the case of Hamilton Standard and Lodge 743.

The events directly involved in the instant proceeding occurred on or about September 30, 1968, during the aforementioned period when the company's recognition of the unions came about involuntarily through judicial compulsion.

Employer's Refusal to Furnish the Union with a List of Employee Addresses

On September 19, 1968, the union submitted a request to the Company for a list of names and home addresses of all bargaining unit employees. The Company officially denied the request on September 30, 1968, on the ground that it would adhere to its long-standing policy of refusing publication of employees' home addresses in the interest of the employees' right to privacy in their homes. However, the Company, in an attempt to accommodate the union's expressed desire to communicate efficiently with all bargaining unit employees, offered assistance to the union in communicating by mail with all employees in matters related to the collective bargaining negotiations. Specifically the Company offered the union use of its mailing facilities (addressograph machine) to facilitate the efficient mailing of union material to all employees. In November 1968, the union took advantage of the Company's offer and sent out a letter to all employees addressed to "All U.A.C. employees who are not yet Union members" (App., pp. 37a-38a).

Further, the Company affirmatively offered and Lodge 743 accepted and used the Company's "literature distribution racks" to facilitate handbilling and leafletting in inclement weather or where other factors precluded efficient manual distribution. In this same

vein, the Company has had a long history of allowing the union access to the Company bulletin board for communication purposes. Finally, the Company as a matter of policy makes available to the union information concerning the departmental location of all employees for purposes of union steward communication. The Company thus offers the union virtual command over every channel that the Company has access to in communicating with bargaining unit employees (App. pp. 43a-46a).

In addition to the above-cited Company offers, which allow the union extensive access to communication channels with all employees, the unions have their own traditional means of communication, i.e., union newspapers, and union steward representation.

REASONS FOR GRANTING THE WRIT

The decision of the Court of Appeals in this case constitutes a decision on an important question of federal law which has not been, but should be, settled by this Court. In addition, the decision of the Court of Appeals is in conflict with the judicial philosophy of this Court that the National Labor Relations Act does not give the Board a broad charter to attempt to equalize the respective economic powers of labor and management. *American Ship Building Company* v. *NLRB*, 380 U.S. 300 (1965). *NLRB* v. *Insurance Agents International Union*, 361 U.S. 477 (1959).

The instant case is the third in a recent line of Board decisions enforced by Courts of Appeal, in which an employer has been compelled to turn over to a union a list of the names and home addresses of employees in the bargaining units. *Standard Oil Company* v. *NLRB*, 399 F.2d 639 (9th Cir. 1968); *Prudential In-*

surance Company v. *NLRB*, 412 F.2d 77 (2d Cir. 1969), cert. den. 396 U.S. 928.

In the *Standard Oil Company* case there were some 1,500 employees in the bargaining unit. The union requested the names and home addresses of employees in the unit in order to counter what it termed the "Company propaganda by mass mailing." The Board, with Court approval, found that "in fact the Union had no way of communicating with the non-member employees . . . ", and thus ordered the Company to give the Union the names and home addresses of the employees involved.

In the *Prudential Insurance Company* case, the Second Circuit Court of Appeals, with Judge Friendly dissenting, enforced a Board order requiring the Company to give the Union the names and home addresses of some 16,795 employees in a bargaining unit extending over 34 states. The Court noted that the Union involved was "relatively small," and that the Union's alternative methods of communicating with employees were unsatisfactory. The Court specifically denied that it was "sanctioning a *per se rule*" requiring companies under all circumstances to provide the Union with such information 412 F.2d at 83.

In the present case the Court again enforced the Board's order that the Company turn over to the Union the names and home addresses of bargaining unit employees tracking the approach of the majority in the *Prudential* case. The Court summarily dismissed the available alternative methods of communication by the Union with the employees as being individually and collectively inadequate to achieve the ideal of such communications which the Board has constructed and the Court has endorsed. In fact, the

mechanical application of the *Prudential* case to the quite different facts of the present case clearly suggests that the Second Circuit has now in fact adopted a *per se* rule in requiring employers to give unions lists of the names and home addresses of their employees regardless of the circumstances of the case.

This conclusion becomes inescapable when the considerable differences between the two cases are analyzed.

1. In *Prudential* the Court found that the unit of employees was "extraordinary in every respect", including the fact that it covered nearly 17,000 employees in 34 states, 412 F. 2d at 79. In the present case the approximately 25,000 employees are nearly all located in the State of Connecticut.

2. In *Prudential* the Court found that handbilling was impractical because of the fact that some 897 individual offices were involved and that most of those offices were in office buildings having many other tenants and no separate entrance for Prudential employees. In the present case there are only six plants involved (East Hartford, Manchester, Southington, Windsor Locks, Broad Brook and Middletown.)

3. In the present case the Company offered to let the Union use its distribution racks in the plants, whereas this factor was not involved at all in the *Prudential* case.

4. In the present case the record showed some 85-100 "shop stewards" and about 400 "union stewards" located at strategic areas thoughout the plants and a relatively stationary employee complement. In the *Prudential* case the stewards or "grievance committees" were under a much more severe limitation in

communicating with employees because of the geographical spread of the unit and the fact that the employees involved in that case rarely worked in the offices and were traveling about soliciting insurance.

5. In the *Prudential* case the bulletin boards were deemed to be an inadequate method of communication because the employees were not stationary and rarely had occasion to view the bulletin boards. In the present case, of course, the employees work primarily in the six plants involved.

6. In the present case the Company offered to let the Union use its mailing facilities to communicate with employees in matters concerning contract negotiations. Such an offer was not involved in the *Prudential* case.

7. In the *Prudential* case the Court contrasted the "extensiveness of the unit" to the size of the Union, which it found was "relatively small." In the present case the Union involved is the fourth largest Union in the United States, having a reported membership of 903,000 employees.[4]

In glossing over these substantial differences it becomes evident that the Second Circuit has elevated the holding of the *Prudential* case into a *per se* rule requiring the disclosure of names and home addresses to the Union upon request.

Such a rule is at variance with the general construction of the Act by this Court. While this Court has held that there is a "general obligation of an employer to provide information that is needed by the bargain-

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[4] BNA Labor Relations Yearbook, 1969, p. 825.

ing representative for the performance of its duties,"[5] it has done so in circumstances where the Union has made a specific demand for information necessary to process a grievance (*NLRB* v. *Acme Industrial Co.*, 385 U.S. 432 (1967)) or to rebut a specific contention made by the Company in bargaining (*NLRB* v. *Truitt Mfg. Co.*, 351 U.S. 149 (1956)). To leap from this proposition to the conclusion that a Union is entitled upon request to a list of the names and home addresses of employees is wholly unwarranted.

No provision of the Act assures to Unions that their communication with unit employees should be ideal. Moreover, this Court in *American Ship Building Co.* v. *NLRB*, 380 U.S. 300 (1965) in a different context had occasion to remind the Board that

> "Sections 8 (a)(1) and (3) do not give the Board a general authority to assess the relative economic power of the adversaries in the bargaining process and to deny weapons to one party or the other because of its assessment of that party's bargaining power." 380 U.S. at 317

See also *NLRB* v. *Brown*, 380 U.S. 278 (1965), and *NLRB* v. *Insurance Agents International Union*, 361 U.S. 477, 497-98.

Just as the interference and discrimination prohibitions of the Act should not be construed by the Board to aid one side or the other in its bargaining power, the good faith bargaining requirement of Section 8 (a)(5) should not be utilized as a device for achieving what the Board considers to be an ideal state of communication between the Union and the unit employees, thereby increasing the Union's economic power.

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[5] *NLRB* v. *Acme Industrial Co.*, 385 U.S. 432 (1967).

The holding of the Court of Appeals below is even more egregious when it is considered that even the Court found that:

> "The Company's initial refusal [to provide the Union the names and addresses of employes] was not an unfair labor practice." (App., p. 10a)

The Court's reason for this finding was that when the request was initially made and rejected in September of 1968 "the coereed 1966 contracts were still in effect." (App., p. 10a). This referred to the fact, as shown in the Statement of the Case, that the Company had questioned the Union's majority status in 1966, that the Board challenged the Company action as being in bad faith and obtained ancillary injunctive relief in the federal court requiring the Company to continue to bargain in good faith with the Union. The product of that injunction was the 1966 contracts. The Board decision finding that the Company's withdrawal of recognition from the Unions was in bad faith, was not enforced by the United States Court of Appeals for the District of Columbia Circuit, which found that "the Company might well have entertained a reasonably based doubt as to the Union's majority status." *Lodges 1746, 743, IAM* v. *NLRB*, 416 F. 2d 809, 813 (D.C. Cir. 1969), cert. den., 90 S. Ct. 751.

In the face of these facts the Court of Appeals in the present case concluded that the Union's request for names and home addresses was an ongoing one, and that the Company's refusal to provide such information after the 1968-1969 negotiations and agreements was an unfair labor practice because:

> "The Company failed to charge such 'taint' when the unions claimed in the late 1968 and early 1969

> negotiations that their dues checkoff cards established their majority status; it rejected the unions' offer to prove their majority status in an election; it accepted in the 1968 and 1969 contracts the unconditional and unequivocal recognition of the unions as the exclusive bargaining agent; and it yielded to the unions' demand that the 'savings clause' be omitted from the new contracts, thereby knowingly waiving its option to terminate in the event of a favorable decision in the District of Columbia case. All of these actions indicate that in the 1968 and 1969 negotiations the Company accepted the fact that the unions were the exclusive bargaining representatives and that their majority was not tainted." (App., pp. 11a-12a).

The Court's interpretation of these events is wholly mistaken. The Company in late 1968 and early 1969 was facing unions which had been unlawfully assisted since the improvident injunction of August 5, 1966—a period of over two years. In concrete terms this meant a two year period when these unions were protected from any rival labor organization and enjoyed the benefits of a coerced recognition, such as two years of checked off dues, paid stewards and access to employee information.

The Company's actions in the 1968 and 1969 negotiations were merely a recognition that the assistance granted these unions over this period of time had been effective in consolidating the unions' power. *Cf. Garment Workers* v. *NLRB*, 366 U.S. 731 (1961). Nowhere in these agreements or negotiations did the Company admit that the unions' apparent majority status was untainted by the above described events of 1966-1968.

A final circumstance making the union's demand for home addresses unjustified in this case was the past history of union directed violence against the homes of persons who chose to work during the 1960 strike. The decision of the Court of Appeals brushes off this past history finding that:

> "Although there was evidence of violence in the past, it took place ten years ago and there has been no evidence of harassment since that time; the threatening statements were merely personal and not attributable to the unions; and no employee testified to present fear of violence." (App., p. 18a).

These comments demonstrate a total insensitivity to the grossness and breadth of the union's misconduct as set out so clearly in *United Aircraft Corp.* v. *Lodge 1746 & Lodge 743, District 91 IAM*, 68 LRRM 2488 (Conn. Sup. Ct. 1968). The legitimate fears engendered by these acts were not dissipated by the passage of a decade. Nor would any employee who valued his own and his family's safety publicly testify regarding his current fears of union misconduct should the unions be given the home addresses of the many current employees who crossed the unions' picket lines in 1960.

CONCLUSION

The importance of the question presented is the approval by the Court of Appeals to the National Labor Relations Board's efforts to seek an equality or parity in the ability of a union and a company to communicate with employees and thus to affect "the relative economic power of the adversaries in the bargaining process" *America Ship Building Co.* v. *NLRB*, 380 U.S. 300 (1965). The Act does not give the Board

such a broad charter, particularly in the above described circumstances of this case.

Respectfully submitted,

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